



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

September 20, 1996

Mr. Ramiro G. Castellano  
Hidalgo County Sheriff's Department  
P.O. Box 359  
Edinburg, Texas 78540

OR96-1726

Dear Mr. Castellano:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 100915.

The Hidalgo County Sheriff's Department (the "department") received a request for the personnel records relating to the hiring, firing, or resignation of a certain employee. You claim that a specific employment application is excepted from required public disclosure by sections 552.102 and 552.108 of the Government Code. We have considered the exceptions you claimed and have reviewed the documents at issue.

Section 552.108 excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime," and "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution." Gov't Code § 552.108; *see Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996). In this case, the requested documents do not appear to relate to law enforcement or prosecution. *See Morales v. Ellen*, 840 S.W.2d 519 (Tex. Civ. App.--El Paso 1992, writ denied) (where no criminal investigation or prosecution results from investigation of police officer for alleged misconduct, section 552.108 is inapplicable); Open Records Decision No. 350 (1982). We conclude, therefore, that the department may not withhold the employment application from public disclosure based on section 552.108 of the Government Code.

You next contend that the employment application is protected by section 552.102 of the Government Code. Section 552.102 excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.), the court ruled that the test to be applied to information claimed to

be protected under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation* for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101 of the act. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy excepts from disclosure private facts about an individual. *Id.* Therefore, information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 (1992) at 1. We do not believe that the employment application in its entirety may be withheld under common-law privacy.

Notwithstanding this ruling, there are certain portions of the employment application that must be withheld under privacy. This office has found that the following types of information are excepted from required public disclosure under constitutional or common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), and personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990). We have reviewed the application and have marked the information that must be withheld under constitutional or common-law privacy.

Further, section 552.119(a) of the Government Code excepts from required public disclosure "a photograph that depicts a peace officer as defined by Article 2.12, Code of Criminal Procedure," with certain exceptions that do not appear relevant here. A photograph that depicts a peace officer may be released only if the peace officer gives written consent to the disclosure. Gov't Code § 552.119(b). Thus, unless the officers give written consent, you must withhold the photograph of the officer contained in the requested information.

In addition, some of the information in the application is protected by section 552.117 of the Government Code. Section 552.117 provides that information may be withheld if it is

information that relates to the home address, home telephone number, social security number, or that reveals whether the following person has family members:

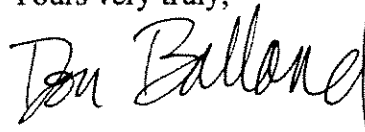
\* \* \* \*

(2) a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code.

Since section 552.117 excepts from required disclosure peace officers' home addresses, home telephone numbers, social security numbers, and information revealing whether the officers have family members, this information must be withheld from disclosure. Code Crim. Proc. art. 2.12; Open Records Decision Nos. 532 (1989), 530 (1989). We have marked the information that must be withheld.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink that reads "Don Ballard". The signature is written in a cursive, flowing style.

Don Ballard  
Assistant Attorney General  
Open Records Division

JDB/ch

Ref: ID# 100915

Enclosures: Marked documents

cc: Ms. Diane Smith  
Monitor Staff Writer  
1101 Ash  
McAllen, Texas 78501  
(w/o enclosures)